

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DAMON JONES, a/k/a JASON
JONES,

Defendant-Appellant.

UNPUBLISHED

June 10, 2008

No. 274868

Wayne Circuit Court

LC No. 06-006850-01

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to consecutive terms of two to five years imprisonment for the felon-in-possession conviction, and two years’ imprisonment for the felony-firearm conviction. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

On September 8, 2005, Detroit Police Officers Ivan Luckey and William Eubanks received information that “a woman was being sexually assaulted” in an apartment on Sterritt Street. They knocked on the identified apartment’s door, and defendant opened it. Luckey recalled seeing two other men standing directly behind defendant. Eubanks asked to enter the apartment to “do a well being check to see if a female was being held” against her will. When defendant refused entry, Luckey radioed to request the presence of a supervisor. After defendant made a simultaneous cell phone call, he announced that he would permit one of the officers to enter the apartment. By then, two additional officers had arrived at the scene.

Luckey followed defendant into a small bedroom and observed four handguns lying on the bed. According to Luckey, defendant “s[a]t on the hand guns.” Luckey ordered defendant to “get up,” and escorted him into the hallway. While still inside the apartment, Luckey also observed suspected narcotics “scattered over the table.” While the officers handcuffed defendant and the other men in the apartment, Luckey reentered the bedroom and noticed the butt of a long gun sticking out from under the bed, several gasoline-filled bottles bearing fuses on the floor, and a digital scale on a table. The police subsequently executed a search warrant in the apartment, and discovered in the same bedroom a bill and a receipt bearing defendant’s name. Two additional receipts belonging to defendant were found elsewhere in the apartment.

In addition to the felon-in-possession and felony-firearm charges, the prosecution charged defendant with the following: possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv); possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii); manufacture or possession of an explosive or incendiary device with malicious intent, MCL 750.211a(2)(b); possession of a short-barreled shotgun, MCL 750.224b; and altering the identification of a firearm, MCL 750.230.¹ The trial court convicted defendant of the felon-in-possession and felony-firearm counts, but acquitted him of the remaining charges. In its bench opinion, the trial court explained that when defendant sat on the guns, he exercised “dominion and control” over them, and continued,

He’s been convicted of a prior felony.

He shouldn’t be exercising dominion and control over those guns, whether he lives there or doesn’t live there.

And so that’s where he made his big mistake.

And I’ll find him guilty of count three, weapon, firearm, possession by a felon; and the felony firearm, count six.

I don’t know about the short barrel shot gun. It was under the bed.

The other guns were right on top of the bed, where the defendant was attempting to hiding [sic] them.

So, not guilty on all of the other counts.

On appeal, defendant contends that his convictions for felon-in-possession and felony-firearm are factually and legally inconsistent with the acquittals on the remaining charges, requiring that that his convictions be vacated. In cases tried without a jury, this Court reviews a trial court’s factual findings for clear error and its conclusions of law de novo. MCR 2.613(C); *People v Conner*, 209 Mich App 419, 423; 531 NW2d 734 (1995).

A jury may render apparently illogical or inconsistent verdicts. *People v Wakeford*, 418 Mich 95, 109 n 13; 341 NW2d 68 (1983); *People v Lewis*, 415 Mich 443, 452-453; 330 NW2d 16 (1982). However, a trial court conducting a bench trial may not enter a plainly inconsistent verdict. *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003). If the trial court’s findings support a conviction and the trial court nevertheless acquits, double jeopardy principles preclude appellate correction of the improper acquittal. *Id.* at 26, 28.

Officer Luckey’s testimony established that defendant exercised dominion and control over the weapons on the bed, specifically that defendant recognized the presence of the hand guns, attempted to hide them, and had direct contact with them. The trial court thus properly concluded that defendant constructively possessed these weapons. *People v Wolfe*, 440 Mich

¹ The prosecutor dismissed the charge of altering a firearm before giving her closing argument.

508, 521; 489 NW2d 748, amended 441 Mich 1201 (1992). Unlike the amply established handgun possession, however, no record evidence tends to support that defendant manufactured or possessed with intent to deliver the illegal drugs found in the apartment. Consequently, we find that the trial court's decision to acquit defendant of the two drug charges fully comported with the evidence.

Apparently the trial court harbored a reasonable doubt regarding whether defendant constructively possessed the shotgun and the incendiary devices. In our view, the evidence would have allowed the trial court to conclude beyond a reasonable doubt that defendant constructively possessed these illegal weapons. But even assuming that the trial court erred by reaching the legal conclusion to acquit defendant of the incendiary device and sawed-off shotgun charges, the trial court's erroneous legal conclusion to acquit does not require reversal of his felon-in-possession and felony-firearm convictions because sufficient record evidence supports these convictions. "[W]here there is no factual inconsistency, we will not set aside defendant's conviction of an offense of which he was clearly found guilty beyond a reasonable doubt." *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998).

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher